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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SILVIA CRUZ-HERRERA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-71394

Agency No. A75-481-526

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006 ^{**}

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Silvia Cruz-Herrera, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming without opinion an immigration judge's ("IJ") decision denying her application for cancellation of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review de novo claims of due process violations in immigration proceedings. *See Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the IJ's discretionary determination that Cruz-Herrera failed to show exceptional and extremely unusual hardship. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929 (9th Cir. 2005).

Cruz-Herrera's contention that the IJ deprived her of due process by failing to consider all the hardship factors in her case does not state a colorable due process claim. *See id.* at 930 (“[t]raditional abuse of discretion challenges recast as alleged due process violations do not constitute colorable constitutional claims that would invoke our jurisdiction.”)

We lack jurisdiction to review Cruz-Herrera's contention that the IJ violated due process by failing to consider her testimony and by minimizing a doctor's testimony regarding her child's dental needs because she failed to raise these issues before the BIA and thereby failed to exhaust her administrative remedies. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (explaining that this court lacks jurisdiction to review contentions not raised before the agency).

Cruz-Herrera contends the IJ violated due process by overlooking the lack of proof that orthodontic facilities are available in Mexico. Contrary to Cruz-Herrera's contention, the proceedings were not "so fundamentally unfair that [she] was prevented from reasonably presenting [her] case." *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (citation omitted). Moreover, Cruz-Herrera failed to demonstrate that additional testimony would have affected the outcome of the proceedings. *See id.* (requiring prejudice to prevail on a due process challenge).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.